

THIS DISPOSITION IS
NOT CITABLE AS
PRECEDENT OF THE TTAB

Mailed:
15 June 2005
AD

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

Roy Bradshaw
v.
Cabela's, Inc.

Cancellation No. 92028640

Request for Reconsideration

Roy Bradshaw, pro se.

Barry L. Kelmachter of Bachman & LaPointe, P.C. for
Cabela's, Inc.

Before Sams, Chief Administrative Trademark Judge¹ and
Chapman and Drost, Administrative Trademark Judges.

Opinion by Drost, Administrative Trademark Judge:

On June 29, 2004, the board denied Roy Bradshaw's
petition to cancel respondent's trademark registration (No.
2,119,664). Subsequent to that decision, a series of papers
were filed with board. We now address those filings, which
we will refer to by the date on the papers.

¹ Chief Judge Sams was substituted for Judge Simms who retired
after the original decision in this case.

On July 27, 2004, petitioner filed, inter alia, a "Motion for Extension of Time to File Brief for Reconsideration of the Board's Final Decision."² Respondent has opposed the request for an extension of time. Petitioner's request for an extension of time to file a brief seeking reconsideration is GRANTED to the extent that petitioner is permitted an additional 30 day period of time to file his motion for reconsideration.³

Petitioner filed a "Brief in Support of His Request for Reconsideration" dated August 14, 2004. Respondent has moved to strike petitioner's brief because it "must be filed within one month from the date of the decision." Motion to Strike dated August 30, 2004 at 1. Respondent also filed a response to petitioner's brief. In view of our abovementioned grant of petitioner's request for an extension of time, respondent's motion to strike is DENIED.

In a paper dated September 13, 2004, petitioner filed a "Reply Brief in response to Registrant's Brief in Response to Petitioner's Request for Reconsideration." In a paper dated September 28, 2004, respondent moved to strike petitioner's reply brief. In a paper dated October 11,

² The July 27, 2004, paper also included a skeletal motion for reconsideration.

³ On July 19, 2004, petitioner filed an unnecessary notice of appeal to the board from the board's decision. His July 27, 2004, paper now seeks to annul that appeal and respondent does not oppose this request. We agree that the notice of appeal and the fee was not necessary. Petitioner may request a refund of the appeal fee.

2004, petitioner responded to respondent's motion to strike his reply brief. As petitioner has argued, "the Board may, in its discretion, consider such a brief." TBMP § 543 (2d ed. rev. 2004). However, we do not find that petitioner's reply brief clarifies the issues and, therefore, we GRANT respondent's motion to strike to the extent that we will not consider the reply brief.⁴

In a paper dated November 1, 2004, petitioner filed a second notice of appeal in which he "hereby appeals to the Trademark Trial and Appeal Board from the decision of the Trademark Examining Attorney dated June 29, 2004." In a paper dated January 3, 2005, petitioner filed an appeal brief. Respondent filed a "Combined Motion to Strike Appeal Brief and Memorandum" dated January 24, 2005, seeking (p. 2) "to strike the Appeal Brief as being both untimely and essentially a regurgitation of the matters raised as part of the Request for Reconsideration filed by petitioner." In a paper dated February 22, 2005, petitioner filed a response to respondent's combined motion to strike. Again, we point out that petitioner's notice of appeal is unnecessary. Petitioner has requested reconsideration of the board's decision of June 29, 2004. We have granted petitioner's request to extend his time to file a motion for

⁴ We do add that even if we considered the reply brief, it would not change the outcome in this proceeding.

reconsideration. Petitioner has filed his brief in support of his request for reconsideration. Contrary to the petitioner's statement in his notice of appeal dated November 1, 2004, the June 29, 2004, decision was a decision of the Trademark Trial and Appeal Board (TTAB), not the Trademark Examining Attorney. There is no provision to "appeal" from a decision of the TTAB to the TTAB.

Therefore, we will not consider petitioner's brief dated January 3, 2005, respondent's response, or petitioner's response except to determine whether to accept these papers.⁵ Inasmuch as there is no provision to "appeal" to the board from the board, we will not consider these papers on the merits.

Now, we are left with the fact that petitioner has sought reconsideration of our decision dated June 29, 2004, and respondent has opposed this request. In his brief in support of his motion for reconsideration, petitioner essentially reargues points that have been addressed in the board decision of June 29, 2004. Therefore, petitioner's motion for reconsideration is DENIED.

At this point, we note that this is a final decision of the Trademark Trial and Appeal Board. For petitioner's convenience, we set out the following rule (Code of Federal

⁵ Again, petitioner may seek a refund of his appeal fee that accompanied his second notice of appeal.

Regulations, Title 37) concerning any subsequent proceedings.

§2.145 Appeal to court and civil action.

(a) Appeal to U.S. Court of Appeals for the Federal Circuit. An applicant for registration, or any party to an interference, opposition, or cancellation proceeding or any party to an application to register as a concurrent user, hereinafter referred to as inter partes proceedings, who is dissatisfied with the decision of the Trademark Trial and Appeal Board and any registrant who has filed an affidavit or declaration under §8 of the Act or who has filed an application for renewal and is dissatisfied with the decision of the Director (§§2.165, 2.184), may appeal to the U.S. Court of Appeals for the Federal Circuit. The appellant must take the following steps in such an appeal:

- (1) In the Patent and Trademark Office give written notice of appeal to the Director (see paragraphs (b) and (d) of this section);
- (2) In the court, file a copy of the notice of appeal and pay the fee for appeal, as provided by the rules of the Court.

(b) *Notice of appeal.* (1) When an appeal is taken to the U.S. Court of Appeals for the Federal Circuit, the appellant shall give notice thereof in writing to the Director, which notice shall be filed in the Patent and Trademark Office, within the time specified in paragraph (d) of this section. The notice shall specify the party or parties taking the appeal and shall designate the decision or part thereof appealed from.

(2) In inter partes proceedings, the notice must be served as provided in §2.119.

(3) Notices of appeal directed to the Director shall be mailed to or served by hand on the General Counsel, according to part 104 of this chapter, with a duplicate copy mailed or served by hand on the Trademark Trial and Appeal Board.

(c) *Civil action.* (1) Any person who may appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (a) of this section), may have remedy by civil action under §21(b) of the Act. Such civil action must be commenced within the time specified in paragraph (d) of this section.

(2) Any applicant or registrant in an ex parte case who takes an appeal to the U.S. Court of Appeals for the Federal Circuit waives any right to proceed under §21(b) of the Act.

(3) Any adverse party to an appeal taken to the U.S. Court of Appeals for the Federal Circuit by a defeated party in an inter partes proceeding may file a notice with the Office, addressed to the Office of the General Counsel, according to part 104 of this chapter, within twenty days after the filing of the defeated party's notice of appeal to the court (paragraph (b) of this section), electing to have all further proceedings conducted as provided in section 21(b) of the Act. The notice of election must be served as provided in §2.119.

(4) In order to avoid premature termination of a proceeding, a party who commences a civil action, pursuant to section 21(b) of the Act, must file written notice thereof at the Trademark Trial and Appeal Board.

(d) *Time for appeal or civil action.* (1) The time for filing the notice of appeal to the U.S. Court of Appeals for the Federal Circuit (paragraph (b) of this section), or for commencing a civil action (paragraph (c) of this section), is two months from the date of the decision of the Trademark Trial and Appeal Board or the Director, as the case may be. If a request for rehearing or reconsideration or modification of the decision is filed within the time specified in §§2.127(b), 2.129(c) or 2.144, or within any extension of time granted thereunder, the time for filing an appeal or commencing a civil action shall expire two months after action on the request. In inter partes cases, the time for filing a cross-action or a notice of a cross-appeal expires

(i) 14 days after service of the notice of appeal or the summons and complaint; or

(ii) Two months from the date of the decision of the Trademark Trial and Appeal Board or the Director, whichever is later.

(2) The times specified in this section in days are calendar days. The times specified herein in months are calendar months except that one day shall be added to any two-month period which includes February 28. If the last day of time specified for an appeal, or commencing a civil action falls on a Saturday, Sunday or Federal holiday in the District of Columbia, the time is extended to the next day which is neither a Saturday, Sunday nor a Federal holiday.

(3) If a party to an inter partes proceeding has taken an appeal to the U.S. Court of Appeals for the Federal Circuit and an adverse party has filed notice under section 21(a)(1) of the Act electing to have all further proceedings conducted under section 21(b) of the Act, the time for filing a civil action thereafter is specified in section 21(a)(1) of the Act. The time for filing a cross-action expires 14 days after service of the summons and complaint.

(e) *Extensions of time to commence judicial review.*
The Director may extend the time for filing an appeal or commencing a civil action (1) for good cause shown if requested in writing before the expiration of the period for filing an appeal or commencing a civil action, or (2) upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect.